

**United States Department of Labor  
Employees' Compensation Appeals Board**

---

**N.M., Appellant**

**and**

**U.S. POSTAL SERVICE, POST OFFICE,  
Arlington, VA, Employer**

---

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

**Docket No. 19-0872  
Issued: September 12, 2019**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

JANICE B. ASKIN, Judge

ALEC J. KOROMILAS, Alternate Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On March 18, 2019 appellant filed a timely appeal from a March 13, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>2</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>1</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$2,435.95 for the period December 13, 2018 through January 5, 2019 for which he was without fault; and (2) whether it properly denied waiver of recovery of the overpayment.

---

<sup>1</sup> The Board notes that, following the March 13, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

## **FACTUAL HISTORY**

On February 5, 2011 appellant, then a 58-year-old sales and services associate (*a.k.a.*, SSA clerk), filed a traumatic injury claim (Form CA-1) when he was reportedly struck on the left drivers' side of his vehicle during a motor vehicle collision while in the performance of duty on that date. He allegedly sustained a soreness and hurting in his lower back, tailbone, and entire left side of his body. Appellant stopped work on that date and received continuation of pay beginning February 6, 2011. On the reverse side of the claim form the employing establishment indicated that appellant was in the performance of duty when injured, that he had received medical treatment, and that he had not yet returned to work. On March 30, 2011 OWCP accepted his claim for left shoulder rotator cuff sprain. It expanded acceptance of his claim to include lumbar sprain, lumbar spondylosis without myelopathy, thoracic and lumbosacral neuritis/radiculitis, and a herniated disc at L4-S1.

OWCP paid appellant wage-loss compensation benefits for temporary total disability on the supplemental rolls, beginning March 23, 2011, and on the periodic rolls beginning June 5, 2011.

On June 3, 2015 appellant underwent OWCP-approved lumbar surgery.<sup>2</sup>

Appellant returned to work in a part-time, limited-duty capacity for four hours per day on December 13, 2018.<sup>3</sup> Appellant retired from federal employment, effective December 24, 2018. He continued to receive wage-loss compensation benefits for total disability through January 5, 2019.

On January 30, 2019 OWCP advised appellant of its preliminary determination that he had received an overpayment of wage-loss compensation in the amount of \$2,435.95 because he received total disability compensation for the period December 13, 2018 through January 5, 2019 after he had returned to part-time, limited-duty work. It noted that for the period December 9, 2018 to January 5, 2019 appellant received \$2,841.94 in wage-loss compensation, but he was only entitled to receive \$405.99, resulting in an overpayment of \$2,435.95. Included in the record was a copy of OWCP's manual adjustment form, which indicated that, during the period December 9, 2018 to January 5, 2019, appellant received compensation in the amount of \$2,841.94. It also noted that, for the period December 9 to 12, 2018, appellant should have received \$405.99, resulting in a net difference of \$2,435.95. OWCP also made a preliminary finding that appellant was without fault in creation of the overpayment of compensation as he was not aware or could not have reasonably known that he continued to receive wage-loss compensation for total disability after he had returned to part-time limited duty. It requested that he complete an enclosed overpayment recovery questionnaire (Form OWCP-20) and submit supporting financial documents. Additionally, OWCP notified appellant that, he could request a prerecoupment telephone conference within 30 days of the date of the letter.

---

<sup>2</sup> A June 3, 2015 operative report indicated that appellant underwent left L5-S1 foraminotomy and discectomy and left L4-L5 discectomy.

<sup>3</sup> In a report dated September 7, 2018, Dr. Robert Squillante, a Board-certified orthopedic surgeon, indicated that appellant could return to work with restrictions of lifting up to 10 pounds and sitting, walking, or standing up to 30 minutes continuously.

OWCP did not receive a completed Form OWCP-20 or any additional documents regarding appellant's preliminary overpayment determination.

By decision dated March 13, 2019, OWCP finalized the preliminary determination that appellant received an overpayment of compensation in the amount of \$2,435.95 for the period December 13, 2018 to January 5, 2019 because he returned to part-time, limited-duty work on December 13, 2018, but continued to receive wage-loss compensation for total disability until January 5, 2019. It continued to find that appellant was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment because he did not submit any evidence in response to the January 30, 2019 preliminary determination to support that recovery of the overpayment should be waived. OWCP requested payment in full within 30 days from the date of the decision.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of duty.<sup>4</sup> Section 8129(a) of FECA provides, in pertinent part, that when an overpayment has been made to an individual under this subchapter because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which an individual is entitled.<sup>5</sup>

Section 8116 of FECA defines the limitations on the right to receive compensation benefits. This section of FECA provides that, while an employee is receiving compensation, he may not receive salary, pay, or remuneration of any type from the United States, except in limited circumstances.<sup>6</sup> Section 10.500 of OWCP's regulations provides that compensation for wage-loss due to disability is available only for any periods during which an employee's work-related medical condition prevents him or her from earning the wages earned before the work-related injury.<sup>7</sup> A claimant is not entitled to receive temporary total disability (TTD) benefits and actual earnings for the same time period.<sup>8</sup> OWCP procedures provide that an overpayment of compensation is created when a claimant returns to work, but continues to receive wage-loss compensation for TTD.<sup>9</sup>

---

<sup>4</sup> 5 U.S.C. § 8102(a).

<sup>5</sup> *Id.* at § 8129(a).

<sup>6</sup> *Id.* at § 8116(a).

<sup>7</sup> 20 C.F.R. § 10.500.

<sup>8</sup> See *K.E.*, Docket No. 18-0687 (issued October 25, 2018); *M.S.*, Docket No. 16-0289 (issued April 21, 2016); *L.S.*, 59 ECAB 350, 352-53 (2008).

<sup>9</sup> *K.E., id.; B.H.*, Docket No. 09-0292 (issued September 1, 2009); Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Initial Overpayment Action*, Chapter 6.200.2(a) (May 2004).

## **ANALYSIS -- ISSUE 1**

The Board finds that this case is not in posture for decision.

OWCP found that appellant received an overpayment of compensation because he received wage-loss compensation for total disability from December 13, 2018 through January 5, 2019 after he returned to part-time, limited duty on December 13, 2018. The evidence of record establishes that appellant returned to part-time, limited-duty work for the employing establishment on December 13, 2018, but continued to receive TTD compensation through January 5, 2019. As noted above, a claimant is not entitled to receive compensation for total disability during a period in which he or she had actual earnings.<sup>10</sup> Therefore, an overpayment of compensation was created in this case.<sup>11</sup>

The Board further finds, however, that this case is not in posture for decision with regard to the amount of overpayment. In its January 30, 2019 preliminary overpayment determination, OWCP found an overpayment of compensation in the amount of \$2,435.95 for which appellant was without fault because he returned to part-time, limited-duty work on December 13, 2018, but continued to receive TTD wage-loss compensation until January 5, 2019. It noted that, for the period December 9, 2018 through January 5, 2019, appellant received \$2,841.94 in wage-loss compensation. OWCP also indicated that, for the period December 9 through 12, 2018, appellant should have received \$405.99 in wage-loss compensation. It calculated this amount by dividing the gross amount that appellant had received from December 9, 2018 through January 5, 2019 of \$3,046.00 by 28 days, which equaled \$108.79 per day ( $\$3,046 \div 28 = \$108.785$ ). OWCP then multiplied the daily rate by four days, which equaled \$435.14. After subtracting appellant's health benefits, it determined that appellant should have received \$405.99 from December 9 to 12, 2018. OWCP subtracted \$405.99 from \$2,841.94 and calculated that appellant received an overpayment of compensation in the amount of \$2,435.95.

OWCP did not, however, calculate the amount of compensation that appellant should have received for the remaining period December 12, 2018 to January 5, 2019. It is unclear from the record why OWCP multiplied appellant's daily rate by 4 days, from December 9 to 12, 2018, when he was overpaid for 24 days from December 12, 2018 to January 5, 2019. Furthermore, OWCP considered the amount of wage-loss compensation that appellant had received from December 9, 2018 to January 5, 2019 even though he did not stop work until December 13, 2018. Due to the lack of financial information in the record, the Board is unable to adequately review this aspect of the case. A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>12</sup> The Board finds that, as the overpayment decision in this case does not provide such an explanation, the amount of overpayment has not been established.

On remand OWCP shall determine the exact amount of overpayment of compensation, which occurred when it continued to pay appellant wage-loss compensation for TTD from

---

<sup>10</sup> *Supra* notes 8 & 9.

<sup>11</sup> *See J.L.*, Docket No. 18-1266 (issued February 15, 2019).

<sup>12</sup> *See C.G.*, Docket No. 18-1655 (issued June 14, 2019); *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *see also O.R.*, 59 ECAB 432 (2008) (the Board determined that with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated).

December 13, 2018 to January 5, 2019 even though he had returned to part-time, limited-duty work on December 13, 2018. It should then issue a new preliminary overpayment determination, with an appropriate overpayment action request form, an overpayment recovery questionnaire, and instructions for him to provide supporting financial information. After OWCP has further developed the case record, a *de novo* decision shall be issued.<sup>13</sup>

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 13, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion.

Issued: September 12, 2019  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

---

<sup>13</sup> As this case is not in posture for decision regarding the amount of overpayment, the issue of waiver is moot. *See S.F.*, Docket No. 18-0003 (issued April 19, 2018); *see also R.L.*, Docket No. 11-1251 (issued January 27, 2012).